

5144

**DECISION**



*H. Feldman*  
**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D. C. 20548

FILE: B-190669

DATE: January 23, 1978

MATTER OF: Ikard Manufacturing Co.

**DIGEST:**

1. Although protester never received amendment which increased quantity, procurement may not be resolicited to provide opportunity to bid on basis of larger quantity because failure to receive amendment was not result of conscious or deliberate effort by contracting agency to preclude bidder from competition.
2. The propriety of procurement rests not on affording every prospective bidder an opportunity to bid but on obtaining adequate competition and reasonable prices. Failure of protester to receive amendment does not require cancellation since procurement activity is not insurer of delivery.

Ikard Manufacturing Co. (Ikard) protests the rejection of its bid for failure to acknowledge a material amendment. Invitation for Bids (IFB) No. DAAH01-77-B-0470, a 100 percent small business set-aside, was issued by the U.S. Army Missile Materiel Readiness Command (Army) for 95 piston cylinders for the Hercules Missile System. On September 13, 1977, amendment 001 was issued to all firms on the bidders list and firms which had requested solicitations. This amendment increased the quantity being procured to 116. Eleven bids were received on October 19, 1977, the date of bid opening. Ikard states that the firm never received the amendment and requests cancellation and resolicitation of the IFB and an opportunity to submit a bid price based on the increased quantity. Award has not been made pending resolution of the protest.

Of the eleven bids received, four failed to respond to the solicitation amendment. However, the Army believed that the amendment was being mailed to all

interested bidders because the number of bidders on the mailing list for the amendment equaled the number of solicitations which had been distributed.

As a general rule, the procuring activity is not an insured of delivery of bidding documents to prospective bidders. The bidder bears the risk of nonreceipt of solicitations and amendments. 52 Comp. Gen. 281, 283 (1972); A. Brindis Company, Inc., B-187041, December 9, 1976, 76-2 CPD 477.

The propriety of a particular procurement rests upon whether adequate competition and reasonable prices were obtained, not upon whether each individual bidder was given an opportunity to bid. See 52 Comp. Gen. 281, 283 (1972). While the Government should make every reasonable effort to insure that amendments are timely received by everyone to whom invitations have been furnished, the failure of a bidder in a particular case to receive an amendment does not warrant cancellation of the invitation for bids. This is particularly true where, as here, there is no indication that adequate competition and a fair price were not obtained. In this connection, none of the bidders who failed to acknowledge the amendment submitted a price lower than that of the proposed awardee. Cancellation of the invitation at this point would cause further delay and additional expense to the Government and to the bidders. See B-147515, January 12, 1962.

Moreover, if a bidder fails to receive and acknowledge a material amendment to a solicitation and adequate competition is obtained, the procurement should not be canceled and resolicited unless failure to receive the amendment is the result of a conscious and deliberate effort by the contracting agency to exclude the bidder from participating in the competition. 40 Comp. Gen. 126, 128 (1950); G&H Aircraft, B-189264, October 28, 1977, 77-2 CPD 329. Based on the record, we have no reason to believe that Ikard failed to receive the amendment due to any deliberate effort by the Army to exclude the firm from competition.

Accordingly, the protest is denied.

Deputy

*R. J. Kistner*  
Comptroller General  
of the United States